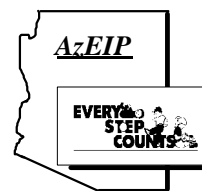


Chapter 7



PROCEDURAL SAFEGUARDS

Arizona Early Intervention Program

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7.0.0 Procedural Safeguards Introduction

Procedural safeguards represent one of the most important protections for children and families within the early intervention system. Federal regulations recognize that families need to be involved personally every step of the way. Providing families with the procedural safeguards and family rights helps ensure that families are involved in the decision-making process regarding services for their child. Rather than being a stand-alone activity, procedural safeguards are best offered to families within the process of participation.

For example:

1. Discuss the early intervention system with families at the initial visit.
2. Explain the difference between evaluation and assessment; involve families in planning of the evaluation to determine eligibility; and obtain the parent's consent prior to evaluation.
3. Regularly discuss the parent's rights to review their child's record and explain how to request changes to the record.
4. Obtain family participation and written consent to implement the services and activities identified in the IFSP.

The following sections set forth the procedural safeguards to which parents involved in AzEIP are entitled.

7.1.0 Definition of Parent

7.1.1 Authority: 20 U.S.C. §1401(23).

7.1.2 Policy

1. A Parent is defined as:
 - A. a biological, adoptive, or foster parent of a child;
 - B. a guardian (but not the State if the child is a ward of the State);
 - C. a person acting in the place of a biological or adoptive parent (such as grandparent, step-parent or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare; or
 - D. a surrogate parent who has been appropriately assigned.

7.2.0 Prior Written Notice

7.2.1 Authority: 20 U.S.C. §1439(a)(6) and (7); 34 C.F.R. §303.403; 303.19.

7.2.2 Policy

1. Prior written notice (PWN) must be given to the Parent of an eligible child a reasonable amount of time before AzEIP proposes or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of

appropriate early intervention services to the child and the child's family.

2. The notice must be in sufficient detail to inform the Parent about:
 - A. the action that is being proposed or refused;
 - B. the reasons for taking the action;
 - C. all procedural safeguards that are available under the federal regulations; and
 - D. the State complaint procedures, including a description of how to file a complaint and the timelines under those procedures.
3. The notice must be understandable to the general public and provided in the native language of the Parent, unless it is clearly not feasible to do so.
4. If the native language or other mode of communication of the Parent is not a written language, the service coordinator shall take steps to ensure that:
 - A. the notice is translated orally or by other means to the Parent in the Parent's native language or other mode of communication;
 - B. the Parent understands the notice; and
 - C. there is written evidence that the requirements of this paragraph have been met.
5. If the Parent is visually or hearing impaired, or has no written language, the mode of communication must be that normally used by the Parent (such as sign language, Braille, or oral communication).

7.2.3 Procedures

1. In general, the Service Coordinator must provide PWN to a Parent *after* the team makes its decisions and *before* the implementation of those decisions. (After the decision, Before the action.)
2. The "Procedural Safeguards for Families" handbook is to accompany every PWN sent. (Note that if the Parent has previously received a copy of the booklet, has been informed verbally of their procedural safeguards, **and** requests not to receive another copy, the service coordinator does not have to give them another copy. The Service Coordinator must document this in writing in the child's file either by placing this information on the Notice of Action form or on the IFSP Team Page.)
3. **Evaluations** - Prior written notice must be provided to a Parent by the Service Coordinator before any evaluation to determine the *initial or continuing*

eligibility for AzEIP. (PWN is not required for an assessment, such as the annual assessment.)

The following are the circumstances when PWN is required concerning evaluations:

A. When there is a proposal to conduct an initial evaluation to determine a child's eligibility, a Parent must receive PWN to determine whether or not to proceed with the evaluation. The Consent for Evaluation form satisfies both the PWN and parental consent requirements. See Section 7.3.0, *Consent*.

Use "Prior Written Notice/Consent for Evaluation" (Feb 05)

B. When there is a refusal to conduct an initial evaluation to determine eligibility, PWN to the Parent is needed. This decision usually is made when discussions with the Parent, a review of available records, and the screening results do not support the need for an evaluation.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

C. When there is a proposal or refusal to conduct an evaluation to determine whether a child continues to qualify for early intervention services, PWN to the Parent is required.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

EXAMPLES

- Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's Parents, conducts a screening and suggests that Lisa be evaluated to determine whether she qualifies for AzEIP. The PWN/Consent for Evaluation **is** required.
- Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's Parents, conducts a screening, reviews available records and proposes that Lisa does not need an evaluation. The PWN/Notice of Action **is** needed.
- After six months in AzEIP, Lisa's mother raises a concern about her slow progress toward learning to hold a bottle by herself. The team discusses Lisa's progress toward this outcome and proposes to have an occupational therapist **assess** Lisa. PWN is **not** needed.
- After a year of receiving services in AzEIP, Lisa has met all of her outcomes and the team feels that she is developing typically. Mom is uncertain about the progress, and the team proposes to **re-**

evaluate Lisa to determine whether she continues to qualify for AzEIP. The PWN/Notice of Action form **is** required.

- After a year of receiving services in AzEIP, Lisa's mother feels Lisa is doing well and asks for an evaluation to determine whether she still qualifies for AzEIP. Lisa has not achieved her IFSP outcomes and the ongoing assessments by the team members do not indicate that Lisa should be re-evaluated to determine eligibility. The PWN/Notice of Action form **is** required.

4. **Eligibility** - The Service Coordinator must provide *prior* written notice to a Parent after the multidisciplinary team determines that a child is eligible, but before the team takes any further action. The PWN informs the Parent of the reasons why the child was determined eligible or not eligible, and the options if there is disagreement with this determination.

The following are circumstances when PWN is needed in the context of an eligibility determination:

- A. A child is initially determined eligible for early intervention services, and the proposal to the Parent is to proceed to the IFSP.

Use "AzEIP Eligibility Letter" (eligible) (Feb 05)

- B. A child is evaluated initially and determined not eligible.

Use "AzEIP Eligibility Letter" (not eligible) (Feb 05)

- C. After a child has been receiving services, s/he is re-evaluated and no longer qualifies for early intervention services.

Use "AzEIP Eligibility Letter" (not eligible) (Feb 05)

5. **Individualized Family Service Plan (IFSP)** - Prior written notice is provided to a Parent by the Service Coordinator at the conclusion of the IFSP meeting (initial and continuing IFSP meetings) to confirm the decisions that were made during the meeting with the Parent. After the decision of outcomes and services, Before services are provided.

The following are circumstances when PWN is needed in the context of the IFSP:

- A. If the team, including the Parent, agrees to all the decisions being made, the signature page of the IFSP (the "IFSP Team Page") may be used as the PWN when all the requirements are followed, as set forth in No.1 of the "IFSP Team Page."

Use "IFSP Team Page" of IFSP (Feb 05)

- B. If the Parent disagrees with the decisions of the other team members, the Service Coordinator must complete the PWN/Notice of Action describing the action being proposed or refused and the reasons for them.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

OTHER INSTANCES WHEN PWN IS NEEDED

- During the IFSP meeting, a service is requested by the Parent and the IFSP team does not agree on the provision or location of this service and refuses to provide it. Use PWN/Notice of Action form.
- During the course of services, the team proposes that a service should be changed (increased, decreased or terminated).
 - If everyone on the team, including the Parent, agrees to the change, the Service Coordinator can, depending on the Parent's preference, either: (1) hold an IFSP meeting and have the Parent initial the changes on the IFSP; or (2) note the changes on the IFSP and date on the "IFSP Team Page" that the Parent requested the change by phone. Then the Service Coordinator dates the change(s) wherever they occur within the IFSP. The signature of the Parent at the next IFSP will confirm the changes made.
 - If the Parent does not agree with the other team members' recommendations for a change, then a Prior Written Notice/Notice of Action form must be completed and provided to the Parent.
- At the annual IFSP meeting, the team proposes that the home is the most appropriate place to provide supports and services and refuses to provide services at the therapist's office as Mom requested.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

See **Appendix A** for Forms Related to Prior Written Notice.

7.3.0 Consent

7.3.1 Authority: 20 U.S.C. §1439; 34 C.F.R. §§ 303.322, 342(e), 401, 404 and 405.

7.3.2 Policy

1. Consent is defined in 34 C.F.R. §401(a) as:
 - A. The Parent has been fully informed of all information relevant to the activity for which consent is sought, in the Parent's native language or other mode of communication;
 - B. The Parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
 - C. The Parent understands that the granting of consent is voluntary and may be revoked at any time.
2. Consent must be obtained before:
 - A. conducting the initial evaluation and assessment of a child to determine eligibility for early intervention services; and
 - B. initiating the provision of early intervention services.
3. If consent is not given, the Service Coordinator shall make reasonable efforts to ensure that the Parent:
 - A. is fully aware of the nature of the evaluation and assessment or the services that would be available; and
 - B. understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.
4. Consent must be in the native language of the Parent or other mode of communication (e.g., sign language). If the native language or other mode of communication is not a written language, the Service Coordinator must ensure that the consent is translated orally or by other means to the Parent, such as Braille, sign language, etc.

7.3.3 Procedures

1. The Service Coordinator is responsible for ensuring that the Parent is fully informed of and have voluntarily approved the early intervention activities in which the child will participate.
2. Consent is to be obtained in the following circumstances and manner:
 - A. Before conducting the initial evaluation and assessment with a Parent and child, the Parent must sign the "Prior Written Notice/Consent for Evaluation" form.¹ The information on the form must be explained to the

¹ This form also constitutes the required prior written notice for a family when provided in accordance with that policy. See Section 7.2.0.

Parent in their native language or other mode of communication (e.g., sign language).

- B. Before early intervention supports and services may begin, consent must be obtained by the Parent. The Service Coordinator must explain the rights and obtain written consent on the signature page of the Individualized Family Service Plan.
3. The Service Coordinator has the responsibility to ensure that the consent is translated, if necessary, and/or another mode of communication is provided so that the Parent understands the consent being given.

7.4.0 Confidentiality

7.4.1 Authority: 20 U.S.C. §§1232g, 1439(a)(2), and 1442; 34 C.F.R. §303.460.

7.4.2 Policy

1. The following definitions apply to this section (20 U.S.C. §1232g):
 - A. “Education records” mean those records that are:
 - (1) directly related to a child referred to AzEIP and/or enrolled in AzEIP; and
 - (2) maintained by AzEIP, an AzEIP service providing agency and/or their contractor for the purpose of providing early intervention services.
 - B. “Personally identifiable information” includes, but is not limited to:
 - (1) the child’s name;
 - (2) the name of the child’s Parents or family members;
 - (3) the address of the child or Parent;
 - (4) a personal identifier, such as the child’s or Parent’s social security number;
 - (5) a list of personal characteristics that would make the child’s identity easily traceable; or
 - (6) other information that would make the child’s identity easily traceable.
 - C. “Directory information” means information contained in a child’s record that would generally be considered harmful or an invasion of privacy if disclosed.
 - D. “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in early intervention records to a person, by any means, including oral, written, or electronic means.
2. AzEIP service providing agencies and their contractors must ensure that procedures protect the confidential, personally identifiable information collected, used, or maintained concerning children enrolled in AzEIP and their families.

3. AzEIP's policy for protecting the privacy of children and families is aligned with the Family Educational Rights and Privacy Act (FERPA), as required under IDEA, 34 C.F.R. §303.460, which incorporates by reference that Act.
4. Personally identifiable information is **CONFIDENTIAL**.
5. A Parent must provide consent by signing a release to permit the exchange of personally identifiable information.
6. According to FERPA, the release must:
 - A. specify the records that may be disclosed;
 - B. state the purpose of the disclosure; and
 - C. identify the party or class of parties to whom the disclosure may be made.
7. All releases are revocable at any time.
8. A release of information is only valid for 12 months.
9. Under FERPA, when a disclosure is made, the Parent may request that s/he receive a copy of the records disclosed.
10. Personally identifiable information of a child or Parent may be disclosed, without parental consent, under certain circumstances. Some of those circumstances include information that is disclosed to:
 - A. in connection with a health or safety emergency;
 - B. to other AzEIP early intervention providers with a legitimate educational interest;
 - C. to authorized representatives of the Comptroller, Attorney General and/or Secretary of the United States;
 - D. to comply with a judicial order or lawfully issued subpoena **BUT ONLY AFTER** AzEIP, the participating agency and/or contractor makes a reasonable effort to notify the Parent in advance of compliance with the judicial order to allow the Parent to seek protective action; and
 - E. when made to authorized representatives of state or local education authorities in connection with Federal legal requirements, such as the child find requirements of local public education agencies.
11. When records are released, AzEIP service providing agencies and contractors may only disclose personally identifiable information on the condition that the individual to whom the information was disclosed, will not disclose the information to any other person without prior consent of the Parent.
12. When medical records or other "protected health information" is placed into a child's early intervention record, it is covered by the privacy protections of FERPA, and no longer the Health Insurance Portability and Accountability Act (HIPAA). HIPAA expressly excludes those records

that are incorporated into a child's educational records in its definition of "protected health information." 45 C.F.R. § 164.501.

13. The service coordinator must maintain a record of all requests for child records.

7.4.3 Procedures

1. The Service Coordinator must obtain informed, written consent from the Parent before personally identifiable information may be disclosed.

A copy of the release is attached as **Appendix B**.

2. Service providing agencies and contractors must protect personally identifiable information which is collected, used, or maintained concerning a child enrolled in AzEIP, the child's Parent, or another family member by:
 - A. keeping child/family files in a locked cabinet located in a semi-private or private location in an office;
 - B. keeping the keys to the file cabinet in a discrete place;
 - C. posting a list of the individuals who have access to the files on or next to the locked cabinets;
 - D. keeping any fax machines in a private area;
 - E. using fax coversheets for confidential faxes;
 - F. keeping computers in a semi-private or private location in an office;
 - G. ensuring all computers have password access only, if appropriate;
 - H. having a paper shredder easily accessible;
 - I. ensuring the availability of space for private/confidential telephone calls; and
 - J. ensuring the availability of space for private/confidential meetings.
3. AzEIP service providing agencies and their contractors must keep within the child's file a record access and record release log, which is accessible to Parents. When records are released, the following information must be recorded:
 - A. the date records are released;
 - B. agency/person to whom the records were released;
 - C. the purpose of release;
 - D. verification that consent is on file and up to date; and
 - E. the records that are released.

A sample AzEIP Records Release and Access Log, which may be used by providers, is attached as **Appendix C**.

4. AzEIP service providing agencies and their contractors must use a log to record the following information when there is a request to access information in a child's record:
 - A. the date records are accessed;

- B. the name of the individual and agency accessing the information; and
 - C. the purpose for the request.
5. The requirement to maintain a log to record when and to whom information is released from a child's record does not apply when the request was from, or the disclosure is to:
- A. the Parent;
 - B. the Service Coordinator; or
 - C. an individual with responsibility to maintain and update child files.

7.5.0 Records – Access, Amendment, and Destruction

7.5.1 Authority: 20 U.S.C. §1232, et seq. (FERPA) and 34 C.F.R. §303.402.

7.5.2 Policy

1. Under IDEA, Part C and FERPA, a Parent must be afforded the opportunity to:
 - A. inspect and review his or her child's early intervention records; and
 - B. obtain copies of early intervention records upon request.
2. Reasonable fees may be charged for copying records requested by a Parent as long as the fee does not prevent the Parent from exercising his or her right to inspect and review the records.
3. Fees may not be charged to a Parent for the search and/or retrieval of the records.
4. FERPA further affords Parents the opportunity to:
 - A. request that their child's early intervention records be amended if a record contains misleading or inaccurate information about the child or Parent;
 - B. obtain a hearing if AzEIP refuses to amend a record; and
 - C. include a statement of disagreement to be kept and disclosed with the record, if the record is not amended as the result of a hearing.
5. Parents are notified annually of their right to:
 - A. inspect and review their child's records, including the procedures to exercise this right;
 - B. seek amendment to the records, including the procedures to exercise this right;
 - C. consent to disclosures of personally identifiable information in their child's records; and
 - D. file a complaint with the Family Policy Compliance Office concerning alleged failures to comply with the requirements under FERPA.
6. AzEIP notifies Parents when personally identifiable information collected, maintained, or used is going to be destroyed. AzEIP maintains child records for five years after the date the child was no longer enrolled in AzEIP.
7. A request for records must be responded to within a reasonable time and no later than 45 days after the request is received.

7.5.3 Procedures

1. A Parent must request in writing, unless unable to do so, that s/he would like to inspect or review the early intervention records of his or her child. The program to whom the request is directed must make available the records requested within two (2) weeks. Shorter periods of time will be considered on a case by case basis.
2. A Parent must request in writing, unless unable to do so, that s/he would like to obtain a copy of his/her child's early intervention records. The program to whom the request is directed must make available the records requested within thirty days. Shorter periods of time will be considered on a case by case basis.
3. If a Parent wishes to amend a child's early intervention records, the Service Coordinator must notify the Parent that s/he must submit a request in writing, if possible, setting forth the specific parts of the child's records that the Parent requests be amended and what the desired amendment is. If the Parent is unable to make the request in writing, the Service Coordinator shall assist the Parent in making the request in another acceptable means, such as Braille, sign language, etc.
 - A. DES/AzEIP shall review the request and determine, within a reasonable time, whether the request interferes with the provision of services to the child and family or otherwise compromises the supports of the program.
 - B. If DES/AzEIP agrees to amend the record, it shall direct the Service Coordinator to so amend the child's record.
 - C. If DES/AzEIP determines not to amend the record as requested, it will notify the Parent in writing along with the reasons for denying the request. It shall also notify the Parent of his/her right to request a hearing, which must be submitted in writing to DES/AzEIP within a reasonable time from the date of the DES/AzEIP letter of denial.
 - D. Upon receipt of a Parent request for a hearing, DES/AzEIP will convene the hearing, providing the Parent notice of the date, time, and place reasonably in advance of the hearing.
 - E. The hearing shall be conducted by the Executive Director of DES/AzEIP, or designee, as long as that person does not have a direct interest in the outcome of the hearing.
 - F. The Parent shall have the opportunity to present evidence at the hearing and may, at his/her own expense, be assisted by one or more individuals, including an attorney.
 - G. DES/AzEIP shall make its decision in writing within a reasonable period of time after the hearing. The decisions must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.
 - H. If the decision is that the record should be amended, DES/AzEIP will direct the Service Coordinator to so amend the record.

- I. If the decision is that the record shall not be amended, the Parent shall be notified within a reasonable time in writing along with notification of the Parents' right to prepare a statement of disagreement to be kept in the child's records. The Service Coordinator maintains the statement in the child's records.
4. The Service Coordinator shall provide every Parent enrolled in AzEIP a copy of the Procedural Safeguards Handbook for Families, which contains an Annual FERPA Notification to Parents, at each annual IFSP meeting, at a minimum.
5. After maintaining a child's early intervention records for five (5) years AzEIP notifies the Parent in writing that the records are going to be destroyed. Notice is sent to the last known address of the Parent. At that time, the Parent may request a copy of the record prior to destruction.

7.6.0 Surrogate Parents

7.6.1 Authority: 20 U.S.C. §1439(a)(5); 34 C.F.R. §303.406.

7.6.2 Policy

1. State procedures protect the rights of the infant or toddler whenever the child's parent(s) cannot be identified, located, or the child is a ward of the State.
2. If a biological or adoptive parent cannot represent the child's interests under IDEA, a relative or stepparent with whom the child is residing/placed may act as a Parent.
3. If there is a legal guardian, other than the State (or its employees), appointed as the guardian for a child, then that person may act as a Parent.
4. If the biological/adoptive parent or relative/stepparent cannot represent the child's interests under IDEA, a foster parent with whom the child is residing/placed may act as a Parent.
5. If a biological/adoptive parent, a relative or stepparent, or foster parent cannot represent the child's interests under IDEA, a surrogate parent must be appointed.
6. When more than one individual is qualified to act as a parent for the child, the biological or adoptive parent is presumed to be the parent for purposes of making early intervention decisions on behalf of the child, unless (i) that person does not have legal authority to make educational decisions for the child (such as when parental rights have been terminated) or (ii) there is a judicial order or decree specifying some other person to act as the Parent for early intervention purposes.
7. A surrogate parent may represent a child in all matters related to:
 - A. the evaluation and assessment of the child;
 - B. development and implementation of the child's IFSP, including annual evaluations and periodic reviews;

- C the ongoing provision of early intervention services to the child; and
- D. any other rights established under IDEA, Part C, such as procedural safeguards.

7.6.3 Procedures

1. A decision must be made as to whom will best represent the early intervention interests of a child: (i) when a referral is made by the Department of Economic Security/Child Protective Services (CPS) or another referral source (such as the Regional Behavioral Health Authority) and the child is a ward of the State; or (ii) when a child enrolled in AzEIP becomes a ward of the State.
2. In the circumstances noted in No.1, above, it is the responsibility of the Service Coordinator (IPP Team Lead or ongoing Service Coordinator) to contact the CPS Specialist to discuss who should represent the child's interests and, if needed, how to gather additional information. This contact should be the first step when working with a child who is a ward of the State.
3. From that discussion, the following individuals may be determined to represent the interests of the child:
 - A. Biological or Adoptive Parent
 - (1) If the CPS Specialist recommends that the child's biological or adoptive parent(s) is available, able, and willing to represent the child's early intervention interests, the Service Coordinator should proceed with the process with the biological or adoptive parent(s).
 - (2) If the initial phone contact by the Service Coordinator is with a caregiver other than the biological or adoptive parent(s), the Service Coordinator must have a similar conversation with the biological or adoptive parent(s), as it is this person who makes decisions, receives Prior Written Notices and Procedural Safeguards, provides consents, and participates in the initial planning process.
 - (3) If the Parent/caregiver declines during the initial phone contact with AzEIP, the Service Coordinator provides the Parent/caregiver with AzEIP contact information, in the event that s/he is interested in referring in the future. The discussion will be documented in the child's file. No further follow-up is necessary, unless there is a subsequent re-referral.
 - B. Relative or Stepparent with whom the Child Lives or Legal Guardian (but not the State)
 - (1) If the CPS Specialist states that (i) the child is living with a person acting in the place of a biological or adoptive parent, such as a relative or stepparent, or an appointed legal guardian appointed (who is not the State or its employee) and (ii) who is available, able, and willing to represent the child's early intervention interests, the Service

Coordinator should proceed with that person and confirm their interests and availability to represent the child.

- (2) If the initial phone contact by the Service Coordinator is with a caregiver other than the relative or stepparent with whom the child lives or legal guardian, the Service Coordinator must have a similar conversation with that relative, stepparent, or legal guardian, as it is this person who makes decisions, receives Prior Written Notice and Procedural Safeguards, provides consents, and participates in the initial planning process to the greatest extent possible.

C. Foster Parent With Whom the Child Lives

- (1) If the CPS Specialist recommends that the foster parent with whom the child is living is available, able, and willing to represent the child's early intervention interests AND the biological parent is unavailable, the Service Coordinator will contact the foster parent(s) to clarify and confirm their availability, willingness, and ability to represent the child under IDEA, Part C.
- (2) If the initial phone contact by the Service Coordinator is with a caregiver other than the foster parent with whom the child lives, the Service Coordinator must have a similar conversation with that foster parent, as it is this person who makes decisions, receives Prior Written Notice and Procedural Safeguards, provides consents, and participates in the initial planning process to the greatest extent possible.

D. Court Appointed Special Advocate (CASA) as possible Surrogate Parent

- (1) If the CPS Specialist recommends the need for a surrogate parent and indicates that the child's CASA is available, able, and willing to represent the child's early intervention interests, the Service Coordinator will contact the CASA to clarify and confirm his/her availability, willingness and ability to be the surrogate parent or be trained as a surrogate parent to represent the child under IDEA, Part C.
- (2) If the CASA agrees, the Service Coordinator proceeds with the CASA representing the child's interests.
- (3) If the CASA is not certified as a surrogate parent, the Service Coordinator will provide the CASA with information to contact the Arizona Department of Education (ADE) to complete the surrogate parent requirements and ensure the CASA completes the requirements within 6 months.

E. ADE Trained Surrogate Parent – unknown to the child

- (1) If the CPS Specialist recommends that AzEIP identify a surrogate parent to represent the child under IDEA, Part C, the Service Coordinator will contact ADE to identify a surrogate parent from the ADE list of trained surrogate parents.
- (2) It is the responsibility of the Service Coordinator to collaborate and coordinate with the CPS Specialist to determine who is the appropriate person to represent the child's early intervention interests and to

document that person's name and contact information in the child's record.

4. As the first priority for representing the child's early intervention interests is the
5. If a surrogate parent is chosen, the Service Coordinator will provide a an overview to the surrogate parent (which will be supplemented by the official Surrogate Parent Training provided by ADE through its designated trainers).
6. Once an individual has been identified to represent the child's interests under IDEA, the Service Coordinator will document the contact information for that person in the child's file, and ensure that all team members have contact information. Documentation should include contacts with the CPS Specialist to identify the individual most appropriate to represent the child's early intervention interests and, as appropriate, attempts to contact the biological parents.
7. The Service Coordinator should proceed with the individual identified to represent the child's interest as the Parent.
8. In those circumstances when the biological parent is not acting as the "parent" but his/her rights have not been severed and his/her whereabouts are known, the Service Coordinator should discuss with the CPS Specialist and the biological parent, strategies to involve the biological parent throughout the initial process, IFSP development and reviews, and/or the implementation of early intervention services, if eligible.
9. When a child, who has been receiving supports and services through AzEIP, no longer has a parent who can be located or identified, or the child becomes a ward of the State, the same procedures apply for determining who can represent the child's educational interests.
10. In all instances when a person is identified to represent the child's interests, this information should be documented by the Service Coordinator in the child's file.

7.6.4 Practice Guidelines

1. Educational decisions on behalf of a child under IDEA, Part C are best made by individual(s) who know the child well and have or will have an ongoing relationship with the child.
2. It is in the best interest of the child to be represented by the following individuals in priority order:
 - A. a biological or adoptive parent;
 - B. a relative or stepparent with whom the child is living, if appropriate;
 - C. a legal guardian, as long as the guardian is not the State (or its employee);
 - C. a foster parent with whom the child lives; or
 - D. a surrogate parent.

3. When identifying a surrogate parent for a child, AzEIP encourages that the foster parent should be considered first as a candidate for surrogate parent, with input from the CPS Specialist and initial planning process team.
4. The surrogate parent is entitled to all of the rights of the biological parent with respect to educational decisions on behalf of the child.
5. The appointment of a surrogate parent to represent the child's educational interests does not preclude the biological or adoptive parent from participating in the early intervention process.

7.7.0 Dispute Resolution**7.7.1 Authority:** 34 C.F.R. §§303.419 – 425; 510-511.

DES/AzEIP is responsible for ensuring that procedures for the resolution of disputes are in keeping with the child's best interests and family's priorities. Parents shall be informed of all their options for dispute resolution, including the option of requesting a hearing and shall be encouraged to seek informal resolution or mediation to resolve differences.

7.7.2 General Policy

1. Service Coordinators are responsible for ensuring that the Parent understand these procedures. If appropriate, they may help the Parent file formal complaints. The Parent will be informed that they may file formal complaints and use the informal complaint resolution process at the same time.
2. If an AzEIP service providing agency utilizes its own process for dispute resolution, it ensures that its policies and procedures are consistent with the rules and regulations of 34 CFR 303.419-425 and AzEIP policies. If the child who is the subject of the dispute is also eligible for another Federal or State program, which has its own dispute resolution process, DES/AzEIP and the other administrative entity will collaborate to determine jurisdiction based on the nature of the complaint.
3. For all complaints alleging failure to implement AzEIP according to IDEA, Part C, DES/AzEIP will facilitate or designate an AzEIP service providing agency to facilitate the dispute resolution process according to IDEA, Part C.
4. During the pendency of mediation, a due process hearing, or civil action, unless DES/AzEIP or the AzEIP service providing agency and the Parent of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial services, the child must receive those services that are not in dispute.
5. In any administrative proceeding the Parent has a right to:
 - A. be accompanied and advised by an attorney and/or individual(s) with special knowledge or training with respect to early intervention services for eligible children;
 - B. present evidence and confront, cross-examine, and call for the attendance of witnesses;
 - C. prohibit the introduction of any evidence at the proceeding that the Parent has not been shown or given at least five days before the proceeding;
 - D. obtain written or electronic, verbatim transcription of the proceeding upon request;
 - E. obtain written findings of fact and decision.

7.7.3 Mediation

7.7.3.1 Authority: 20 U.S.C. §1415(e); 34 C.F.R. §303.419.

7.7.3.2 Policy

1. Mediation is voluntary and may only be used when both parties to the dispute agree to do so.
2. A Parent or DES/AzEIP may seek mediation related to AzEIP's proposal or refusal to initiate or change the:
 - A. identification of the child;
 - B. evaluation of the child;
 - C. placement of the child; or
 - D. provision of early intervention services to the child and family.
3. Mediation cannot be used as a mandatory preliminary step prior to any other administrative or legal recourse.
4. Mediation may not be used to deny or delay a Parent's right to due process or to deny any other rights under IDEA, Part C.
5. Mediation is to be conducted by a qualified, impartial mediator.
6. Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent hearing procedure or civil proceeding. Parties to mediation may be required to sign a confidentiality pledge before beginning the mediation.

7.7.3.3 Procedures

1. The following are the steps to initiate the mediation process:
 - A. A written request is made to the appropriate AzEIP service providing agency representative or to the Executive Director of DES/AzEIP.
 - B. The appropriate AzEIP service providing representative, or the Executive Director of DES/AzEIP or a designee, will obtain written agreement to the mediation process by all other parties to the dispute.
 - C. Once agreement is obtained, the appropriate AzEIP service providing agency representative or the Executive Director of DES/AzEIP or designee, will appoint a qualified, impartial mediator who is trained in effective mediation techniques. DES/AzEIP will access qualified mediators who are knowledgeable in laws and regulations related to all aspects of early intervention services.
 - D. The appropriate AzEIP service providing agency representative or the Executive Director of DES/AzEIP or a designee, shall ensure that each session of the mediation is scheduled in a timely manner and in a location convenient to all parties involved in the dispute.
 - E. The appropriate AzEIP service providing agency representative or the Executive Director of DES/AzEIP or a designee, shall ensure that agreements reached by all parties through mediation will be recorded in a written mediation agreement.

2. When an AzEIP service providing agency uses its own process for dispute resolution, that agency must inform the Executive Director of DES/AzEIP within two days of receiving the complaint. The agency must then keep DES/AzEIP apprised of the progress of the dispute.
3. If the AzEIP service providing agency does not have its own procedures for mediation, or requires DES/AzEIP to facilitate the mediation process for any reason, then the service providing agency must inform DES/AzEIP within 24 hours of receiving the request.
4. The AzEIP service providing agency or DES/AzEIP will bear the cost of the mediation process.

7.7.4 Due Process Hearing

7.7.4.1 Authority: 34 C.F.R. §§303.420-423; 425.

7.7.4.2 Policy

1. A Parent or DES/AzEIP may file a complaint related to AzEIP's proposal or refusal to initiate or change the:
 - A. identification of the child;
 - B. evaluation of the child;
 - C. placement of the child; or
 - D. provision of early intervention services to the child and family.
2. A Parent or DES/AzEIP has the opportunity for an impartial due process hearing on a complaint concerning the matters reference in 7.7.11 (1).
3. An AzEIP service providing agency may follow its own due process hearing procedures, as long as they are consistent with the rules and regulations of 34 CFR §§303.419-425 and DES/AzEIP policies.
4. If the child who is the subject of the hearing is also eligible for another Federal or State program, which has its own due process hearing procedures, DES/AzEIP and the other administrative entity will collaborate to determine jurisdiction based on the nature of the complaint. For all complaints alleging failure to comply with IDEA, Part C, DES/AzEIP will facilitate or designate an AzEIP service providing agency to arrange the due process hearing according to IDEA, Part C.
5. All due process hearings must be carried out at a time and place that is reasonably convenient to the Parent.

7.7.4.3 Procedures

1. To file a complaint, a Parent or DES/AzEIP must send a written, signed complaint to the Executive Director of DES/AzEIP which includes both of the following:
 - A. a statement concerning the matters related to AzEIP's proposal or refusal to initiate or change the:

- (1) identification of the child;
 - (2) evaluation of the child;
 - (3) placement of the child; or
 - (4) provision of early intervention services to the child and family.
- B. the facts of the situation.
2. When an AzEIP service providing agency uses its own process for a due process hearing, that agency must inform the Executive Director of DES/AzEIP within two days of receiving the complaint. The agency must then keep DES/AzEIP apprised of the progress of the dispute.
3. If the AzEIP service providing agency does not have its own procedures for due process hearings, or requires DES/AzEIP to facilitate the due process hearing for any reason, then the service providing agency must inform DES/AzEIP within 24 hours of receiving the request.
4. The following are the steps to initiate a due process hearing:
 - A. A written request must be filed with the appropriate service providing agency representative or with the Executive Director of DES/AzEIP.
 - B. The appropriate AzEIP service providing agency representative, or the Executive Director of DES/AzEIP or a designee, shall appoint a trained, impartial hearing officer.
 - C. The hearing officer shall:
 - (1) have knowledge about the provisions of IDEA, Part C and the needs of, and services available for, eligible children and their families;
 - (2) not be employed by the agency providing early intervention services to the child and family, except when a person who otherwise qualifies to conduct the hearing is paid by the agency solely to serve as a hearing officer; and
 - (3) not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
 - D. The hearing officer shall:
 - (1) listen to the presentation of relevant viewpoints about the dispute;
 - (2) examine all information relevant to the issues;
 - (3) seek a timely resolution; and
 - (4) provide a record of the proceedings, including a written decision.
 - E. The due process hearing procedures must be completed and a written decision mailed to each of the parties within 30 days after the appropriate AzEIP service providing agency or DES/AzEIP receives the request.
 - F. Unless agreed upon by the Parent and DES/AzEIP, there shall be no change made in the services received by the child prior to a final order by a Hearing Officer.
 - G. The decision made in a hearing is final.

7.7.5 System Complaint

7.7.5.1 Authority: 34 C.F.R. §303.420.

7.7.5.2 Policy

1. An individual or organization may file a written, signed complaint with DES/AzEIP alleging a violation of the requirements and regulations of IDEA, Part C and the facts on which the complaint is based.
2. Parents shall be given, in writing, information describing the procedures to resolve disputes.
3. Parents will be informed that they may file a formal complaint and use the informal complaint resolution process at the same time. Service Coordinators are responsible for ensuring that Parents understand these procedures. If appropriate, they may help Parents file a formal complaint.
4. Information on the procedures to resolve disputes will be available to:
 - A. the service providing agencies and their contractors;
 - B. family training, protection, and advocacy centers; and
 - C. other appropriate individuals, agencies, institutions, and organizations.
5. Complaints alleging a failure by an AzEIP service providing agency or contractor to implement a due process hearing decision must be resolved by DES/AzEIP.

7.7.5.3 Procedures

1. The following are the steps to initiate a complaint:
 - A. An individual or organization sends a written, signed complaint to the Executive Director of DES/AzEIP which includes:
 - (1) a statement that the State has violated a requirement or regulation of IDEA, Part C; and
 - (2) the facts of the situation.
 - B. The Executive Director or designee will review the complaint to determine its validity for follow-up. A complaint will be judged valid if the alleged violation occurred not more than 1 year before the date the complaint was received; unless:
 - (1) the alleged violation continues for the child or other children; or
 - (2) the complainant is requesting reimbursement or corrective action for a violation that occurred not more than 3 years before the complaint was received.
 - C. The Executive Director or designee will review all relevant information and will:
 - (1) conduct an independent on-site investigation, if necessary; and
 - (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

- D. The Executive Director or designee will make an independent determination as to whether the agency is violating a requirement or regulation of IDEA, Part C.
 - E. The Executive Director of DES/AzEIP or designee will send a written decision to all parties. The decision shall address each allegation in the complaint and include:
 - (1) findings of fact and conclusions; and
 - (2) the reasons for the final decision.
 - F. When necessary, DES/AzEIP's decision will also include procedures for technical assistance and corrective action plans for bringing an agency into compliance.
 - G. In resolving a complaint in which it finds a failure to provide appropriate services, DES/AzEIP, pursuant to its general supervisory authority under IDEA, Part C, will address:
 - (1) how it will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's Parents; and
 - (2) appropriate future provision of services for all infants and toddlers with disabilities and their families.
- 2. All investigations and resolutions must be completed within 60 days of original receipt of the complaint. An extension may be granted in extraordinary cases only, where the nature or severity of allegations warrants further investigation.
 - 3. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, DES/AzEIP will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar day timeline using the procedure described above.
 - 4. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:
 - A. the hearing decision is binding; and
 - B. DES/AzEIP must inform the complainant to that effect.

7.7.6 Civil Action

7.7.6.1 Authority: 34 C.F.R. §303.424.

7.7.6.2 Policy

- 1. Any party dissatisfied by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court.